

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
RAQUEL A. PESCE,
on behalf of herself and all others similarly situated,

CLASS ACTION COMPLAINT

Plaintiff,
-against-

PHILLIPS & BURNS LLC

Defendant
-----x

Plaintiff, by and through her undersigned attorney, alleges upon knowledge as to herself and her own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from the defendant's violation of §1692 *et seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.
3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

PARTIES

4. Plaintiff Raquel A. Pesce (hereinafter "Pesce") is a resident of the State of New York, Orange County. On or about September 10, 2007, plaintiff received a debt collection notice from defendant Phillips & Burns, LLC.

5. Defendant Phillips & Burns, LLC (hereinafter "P & B") is a domestic limited liability company engaged in the business of collecting debts with its principal place of business located in Buffalo, New York. Defendant regularly attempts to collect debts alleged to be due another.

CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action as a nationwide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of herself and all consumers who have received debt collection notices and/or letters from the defendant which are in violation of the FDCPA, as of the date of plaintiff's complaint, and their successors in interest (the "Class"). Excluded from the Class is the defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Phillips & Burns, LLC.

7. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

8. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, hundreds of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.

9. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692g, 1692g(a)(4) and 1692g(a)(5).

b. Whether plaintiff and the Class have been injured by the defendant's conduct;

c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether plaintiff and the Class are entitled to declaratory and/or injunctive relief.

10. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

11. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

12. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

13. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

14. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

15. On or about September 10, 2007, defendant did send to the plaintiff an initial collection letter. Copy of said letter is annexed hereto as Exhibit A.

16. The ~~September 10, 2007 letter~~ attempted to collect on behalf of PCI. The original creditor is identified as Citibank/Home Depot.

17. Defendant's letter stated "To avoid any further action, you should remit the entire balance immediately."

18. Said demand for immediate payment upon threat of further action overshadows the federally mandated thirty day notice which grants the consumer thirty days from receipt of the collection letter to dispute the debt.

19. Defendant violated 15 U.S.C. section 1692g(a)(4) and 15 U.S.C. section 1692g(a)(5) by failing to provide the consumer with a statement that the consumer is entitled to both verification of the debt and the name and address of the original creditor, by stating "If you dispute this debt or any portion thereof within the 30 day time period we will furnish at your written request, a verification of this debt, or the name and address of the original creditor."

20. As a result of defendant's abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

FIRST CAUSE OF ACTION
(Violations of the FDCPA)

21. Each of the above allegations is incorporated herein.

22. Defendant's debt collection attempts violate various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692g, 1692g(a)(4) and 1692g(a)(5) by threateningly overshadowing, curtailing and abbreviating the dispute protections.

23. As a result of defendant's violations of the FDCPA, plaintiff has been damaged and is entitled to statutory damages, costs and attorney's fees.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment as follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Awarding plaintiff statutory damages;
- c) Awarding class members the maximum statutory damages.
- d) Awarding plaintiff costs of this action, including reasonable attorneys' fees and expenses; and
- e) Awarding plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: October 9, 2007
Uniondale, New York



Abraham Kleinman (AK-6300)
KLEINMAN LLC
626 RexCorp Plaza
Uniondale, New York 11556-0165
Telephone (516) 522-2621
Facsimile (888) 522-1692

PO Box 23197 • Tampa FL, 33622-5197
Telephone: (813) 889-9600 • Toll Free: (877) 743-9600

September 10, 2007

271990
Pesci Raquel A
452 E Crooked Hill Rd
Pearl River NY 10965-1183

Original Creditor: Citibank/HomeDepot
Client: PC1
File #: 271990
Original Acct #: 6035320016987016
Original Balance: \$14738.49

Dear Pesco, Rachel A.:

Despite numerous requests for payment, your account remains seriously delinquent.

If we do not receive payment in full on your account, we will pursue all available rights and remedies we may have against you. To avoid any further action, you should remit the entire balance immediately. If you wish to propose a payment arrangement, it must first be discussed with and agreed to by an authorized representative of this office.

Please be further advised that unless we receive payment in full, or agree to an acceptable payment arrangement in the time constraints outlined within the disclosure below, we will be free to pursue any available rights and remedies against you without further notice.

Yours Truly,

Pre-Legal Claims MGR
Phillips & Burns LLC

Unless this account or any portion thereof is disputed within 30 days from the receipt of this notice, we will assume this debt to be valid. If you dispute this debt or any portion thereof within the 30 day time period we will furnish at your written request, a verification of this debt, or the name and address of the original creditor. This communication from a debt collector is an attempt to collect a debt and any information obtained will be used for that purpose.

Make Payments Online Now Quick & Easy at: www.phillipsburns.com

PO Box 25197 • Tampa FL 33622-5197 • Telephone: (813) 889-9600

TY70DAPC2 *** Please detach below and return in the enclosed envelope with your payment ***

003175-PBL-10827X7AD255C2

PO Box 505
Linden MI 48151-0505

ADDRESS SERVICE REQUESTED

September 10, 2017

Original Creditor: Citibank/HomeDepot
Client: PCI
File #: 271990
Original Acct #: 6035320016987016
Balance: \$14738.49

Phillips & Burns LLC
461 Ellicott St 3rd Floor
Buffalo NY 14203-1519